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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Optometry, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC105-20
VAC Chapter title(s)	Regulations Governing the Practice of Optometry
Action title	Regulations for laser surgery certification
Date this document prepared	August 26, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

These amendments to an existing chapter provide certification for optometrists to perform laser surgery pursuant to [Ch. 16](#) and [Ch. 17](#) of the 2022 Acts of Assembly. That legislation required the Board to promulgate regulations to establish criteria for certification of optometrists to provide certain laser surgery.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

N/A

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The mandate for this action comes from [Ch. 16](#) and [Ch. 17](#) of the 2022 Acts of Assembly, which required the Board to promulgate regulations regarding certification of optometrists to perform certain laser surgery.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Regulations of the Board of Optometry are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be "[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system."

Enactment clauses 2 and 4 of [Ch. 16](#) and [Ch. 17](#) of the 2022 Acts of Assembly require the Board to promulgate regulations related to certification of optometrists to perform laser surgery.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The agency was required by legislation to promulgate regulations. The legislation specifically stated that the Board "shall promulgate regulations establishing criteria for certification of an optometrist to perform certain procedures . . ." The legislation further stated that the regulations shall include provisions for (i) promotion of patient safety; (ii) identification and categorization of procedures for the purpose of issuing certificates; (iii) establishment of an application process for certification to perform such procedures; (iv) establishment of minimum education, training, and experience requirements for certification to perform such procedures; (v) development of protocols for proctoring and criteria for requiring such proctoring; and (vi) implementation of a quality assurance review process for such procedures performed by certificate holders. See [Ch. 16](#) and [Ch. 17](#) of the 2022 Acts of Assembly, enactment clause 2.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The changes being considered include:

- Definitions specific to laser surgery, including “laser surgery certification,” definitions related to laser surgery examination, “proctored session,” and “proctoring.
- Requirements to obtain a laser surgery certification, including fees, education, and clinical training, whether in a school setting or via proctored sessions.
- Specific requirements for proctoring and proctors.
- Reporting requirements as required by [Ch. 16](#) and [Ch. 17](#) of the 2022 Acts of Assembly, enactment clause 4.
- Reporting requirements to maintain a quality assurance review process.
- Fees related to certification.
- Any needed renewal requirements.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no alternatives to regulation. Regulation is required by the enacting legislation and the Board must enact regulations to institute a new certification process.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board of Optometry is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>.

Comments may also be submitted by mail, email or fax to Erin Barrett, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or erin.barrett@dhp.virginia.gov or by fax to (804) 915-0382. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.